

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 217 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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KANUBHAI MANILAL NAYAK

Versus

COMMISSIONER OF POLICE  
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Appearance:

MR SATISH R PATEL for Petitioner

MS HANSABEN PUNANI AGP for Respondent No. 1, 2, 3  
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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 27/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. The petitioner herein challenges the order of preventive detention dated 7th November, 1998 made by the Commissioner of Police, Vadodara City, under the powers

conferred upon him under Sub-section 2 of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as, 'the Act'].

3. The petitioner is alleged to be a habitual offender and for that matter, 'a dangerous person' within the meaning of Section 2 (c) of the Act, and his activities are alleged to be detrimental to the maintenance of public order. Some three offences, punishable under Chapter XVII of the Indian Penal Code, have been registered against the petitioner and are pending investigation. In each of the said cases, stolen articles were recovered from the petitioner. While recording his subjective satisfaction, the detaining authority has relied upon the police papers relating to the aforesaid three offences and the statements of three witnesses have been recorded by the concerned Police Inspector. It is categorically mentioned that the detaining authority had personally verified the statements made by the said witnesses and he was of the opinion that privilege conferred under Section 9 (2) of the Act was required to be exercised. Upon perusal of the records, I find that the above referred statement made by the detaining authority is not supported by the material on record. The statements made by the witness no. 2 was recorded by the concerned Police Inspector, however, the same has not been verified either by the said Police Officer or by any other police officer or by the detaining authority. Thus, the subjective satisfaction has been recorded by the detaining authority on non-existent material. The same is, therefore, vitiated. The continued detention of the petitioner, therefore, is not tenable.

4. Petition is, therefore, allowed. The impugned order dated 7th November, 1998; Annexure-A to the petition, is quashed and set-aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

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Prakash\*